

论食品安全强制责任保险的构建

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论食品安全强制责任保险的构建  
On Construction of Food Safety Compulsory  
Liability Insurance

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## 内容摘要

近年我国食品安全问题严重，频发的食品安全事故不仅让广大消费者遭受了巨大的人身财产损失，也让食品生产经营者面临着巨大的赔偿风险。构建食品安全强制责任保险制度成为解决食品安全问题的必经之路。本文在分析食品安全责任保险的现状及其困境的基础上，对食品安全强制责任保险的特征、理论基础、构建的现实性需求和可行性进行了论述，并探讨了构建食品安全强制责任保险制度对现有理论及制度体系的冲击和影响，最后就食品安全强制责任保险的构建提出了一些具体的建议。

本文除了引言和结语外，共分四章：

第一章厘清我国食品安全责任保险的现状。受困于食品安全责任体系的不健全，承保范围有限、投保率低、缺乏强制性等原因，我国现有的食品安全责任保险未能充分发挥分散风险、补偿损失等功能，面临着发展的困境。

第二章探讨食品安全强制责任保险构建的必然性以及可行性。食品安全强制责任保险具备法定强制性、保护消费者利益等特点，其存在与发展有着深刻的理论基础及强烈的现实性需要。同时，法律环境的完善、责任保险的发展和国内外强制保险的立法经验均为其构建提供了可能。

第三章分析构建食品安全强制责任保险带来的影响。食品安全强制责任保险体系的建立会对传统契约理论如契约自由、合同相对性形成突破，冲击现有侵权责任体系、促进无过错责任的扩张与变革，并且可能引发道德风险。但这些冲击、影响有其存在的必然性与合理性，道德风险等不利影响可以通过合理的制度建设进行有效地防范与克服，并非构建食品安全强制责任保险无法逾越的障碍。

第四章对我国食品安全强制责任保险体系的构建提出了具体设想。明确食品安全强制责任保险的立法原则与模式，采取“不盈利不亏损”经营原则，界定承保范围与保险责任，并为其构建进行必要的制度准备。

**关键词：** 食品安全；强制保险；构建



## ABSTRACT

The food safety issues of our country have been very serious in recent years. The frequent food safety accidents not only bring great personal and property losses to consumers, but also bring the huge compensation risk to food producers and dealers. Establishing the system of food safety liability compulsory insurance (hereinafter “FSLCI”) has become an essential issue in order to solve the problem. On the basis of analyzing the current situation and difficulties of food safety liability insurance, this paper discusses the characteristic and theoretical basis of FSLCI, then demonstrates the realistic demands and feasibility of establishing the insurance, and explores the impact and influence to the existing theory and institutional system. And this paper also provides some specific suggestions for the construction of FSLCI.

Besides the preface and conclusion, this paper consists of four chapters as following:

The first chapter clarifies the present situation of food safety liability insurance in our country. Being limited by the imperfect food safety responsibility system, the limitation of the insurance coverage, the lack of mandatory requirement and other reasons, the food safety liability insurance failed to scatter the risk and compensate the loss effectively.

The second chapter discusses the inevitability and feasibility in constructing the FSLCI. The FSLCI has the characteristics of statutory enforceability and customer-interest protecting. Its existence and development have a profound theoretical basis and strong practical needs. Meanwhile, by the improvement of legal circumstance, the development of liability insurance and the legislative experience in China and abroad, the Construction of FSLCI become possible.

The third chapter analyzes the influence of establishing the system of



FSLCI. The construction of the insurance will impact the traditional contract theory and tortious liability, promote the expansion and transformation of no-fault liability, and it may also lead to moral risk. The existence of these adverse influences has its own necessity and rationality, which could be prevented and overcome by the construction of reasonable and effective system. The influence cannot be the insuperable obstacles in establishing the system of FSLCI.

The fourth chapter provides several specific proposals for the construction of FSLCI, such as legislative principle and mode, “non-profit and non-loss” operating principle. This chapter also clarifies the coverage and liability of insurance, and makes the necessary institutional preparation.

**Key words:** Food Safety; Compulsory Insurance; Construction

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